

## **REMARKS/ARGUMENTS**

1. In response to the Examiner's rejections of claims 25 and 27-30 under 35 USC § 112, the Applicant has amended the claims to particularly point out the features which the Applicant believes are the parts of the invention. Specifically, claim 25 has been amended to include the use of the nomenclature of open and closed when referring to the various positions in which the present invention allows the cover of the device to be moved. The description of the hinge plate has been amended to include the description of the hinge plate as having a width and a length and the dimensions of these portions in relation to various other portions of the cassettes are described. Support for all of these amendments is found in Figures 4,5, 6 and 7 of the application as filed. Applicant respectfully submits that these claims, in form in which they are presently constituted now overcome these rejections which have been included by the Examiner and respectfully requests that the rejection of these claims under 35 USC §112 second paragraph be withdrawn.

2. In addition to these amendments claim 1 has been amended to include various rewordings of these same features, which are presently disclosed in the present application. These amendments add no new matter to the application and acceptance of these amendments is respectfully requested.

### ***Response to Examiner's Arguments***

3. In the portion of the Examiner's Office Action entitled Response to Arguments, the Examiner indicates his belief that the Dabich reference is within the scope of the Applicant's endeavor, and makes the statements that modifying the dimensions of a hinge plate does not affect the function of the hinge plate.

4. Applicant disagrees with these statements, and apologizes for any imprecise communication which may have lead the Examiner to reach this conclusion.

5. The dimensions of the hinge plate in relation to the sides and cover, and the location of the hinges within the double hinge assembly of the present invention are crucial allowing the desired and claimed functions to take place. If the hinge plate and the hinges are not located in the manner which is claimed and described the cover and the hinge will lack the ability to lay completely flat in the same plane as the bottom of the cassette when in a first open position and not be able to fold into a second open position wherein the top cover is folded under the cassette. These limitations are specifically described in the claims as currently amended.

6. None of the prior art references which have been presented by the Examiner contain nor teach such a feature.

7. The Wittrock reference does not have a hinge that lays flat in the same plane as the top cover when in a first open position. The Wittrock reference holds the hinge in a higher plane than the top cover when the top cover is opened. This is required because the cassettes in the Wittrock device are made up of two symmetrical pairs that are connected by a hinge. The ends, edges and sides of the top and bottom halves are symmetrical.

8. The present invention is not intended nor configured for use with such a cassette. The cassettes for which the present invention is intended and configured is contained a generally flat two dimensional lid, not a three dimensional type of lid which is described in the Wittrock reference. A hinge assembly, such as the assembly which is described in the present invention would not function with the Wittrock reference because the sides of the top cover would prevent the remaining portions of the top cover from lying flat. In order to maintain the shape of the halves of the cassette in the formation in which they are shown, the Wittrock reference requires that the hinge must be placed in a raised position when compared to the bottom and sides of the rack itself.

9. With regard to the Dabich reference, Applicant asserts that it is not within the same field of endeavor as the present invention. First, because the Dabich reference is directed to a connection to a man hole type of cover and not to sterilization cassettes or equipment, which is the field in which the present invention resides and which is a clear limitation made by the claims themselves. Second, the device in the Dabich reference is not configured to fold past the plane in which the hinges are positioned.

10. The Dabich reference teaches a device that is double hinged so as to allow a heavy item such as a manhole cover to be more easily opened. This device is not intended, nor could it function to allow the cover to fold back under itself as the hinge in the present invention is configured and intended to do. In the context of the Dabich reference such a modification would be prevented by the dimensions of the lids themselves and the devices into which the device would be placed, allowing a heavy lid to swing in a full arc against the hinges would pull the device out of its position, and ruin the hinges. As a practical matter the locations into which these devices are typically placed prevent such occurrences from taking place.

11. In addition there is no motivation to combine the Dabich reference with the teachings of the Wittrock reference. Making such a combination would divide the three dimensional lid which is shown in the Wittrock reference and would destroy the utility of that device

***Claim Rejections - 35 USC § 102***

12. The Examiner has rejected claims 25 and 30-32 as being anticipated by Wittrock et al. Applicant respectfully disagrees with this rejection for the following reasons.

13. As described above, the Wittrock reference is directed to a different type of hinge for use on a different type of sterilization container. The Wittrock reference is directed to a plastic container made up of two symmetrical three-dimensional halves that are interconnected by a hinged assembly.

14. Because the Wittrock device is fundamentally different from the device shown in the present invention, the reason for connecting the device is also different. The Wittrock device does not teach a device that has a hinge that is connected to a generally flat top in way whereby the top, bottom and hinges are enabled to lay flat in the same plane. This is a claimed feature of the present invention.

15. The Wittrock device does not teach a hinge that is connected to and divides the top or side of the container. This is also a claimed feature of the present invention.

16. The Wittrock device does not teach a hinge plate that has the same width and length as the sides or a portion of the top of the container. This is also a claimed feature of the present invention.

***Claim Rejections 35 USC §103***

17. The Examiner has rejected claim 1 under 35 USC §103(a) as being unpatentable over Wittrock in view of Dabich.

The Examiner argues that the Wittrock reference teaches all of the features set forth in claim 1 except for the presence of a second hinge that divides the top portion of the device into two interconnected pieces. The Examiner then argues that the Dabich reference teaches this feature and that it would have been obvious for one of skill in the art to combine these references by modifying the structure of the Wittrock reference to include a double hinge closing mechanism that provides two interconnected lids.

The Applicant respectfully points out to the Examiner the following.

- 1) The Dabich reference is not analogous prior art.

The Dabich reference is directed to a device that is used to solve an entirely different problem. The Dabich reference is directed to heavy lids for subsurface enclosures and particularly to lids on pre-fabricated pits designed for use in servicing aircraft etc. at docking, loading and refueling terminals. See U.S. Pat. No. 4,535,908 col. 1 lines 10-15. The Dabich reference teaches a structure for providing a heavy duty lid which can be used to withstand the forces that are placed upon it by the passage of heavy items such as airplanes, service vehicles and the like while also being sufficiently light so as to allow a portion of these lids to be lifted without the necessity of heavy machinery. The Dabich reference teaches that providing a generally heavy larger lid having a first diameter together with a smaller interior lid both of which are hinged together provides a covering that meets the aforementioned goals. While the Dabich reference does teach that the two lids are connected by a hinge, the Dabich reference is not prior art and is not properly combinable with the Wittrock reference.

In order to maintain a rejection under 35 USC §103 the art included in the rejection must be analogous prior art. A reference will only be analogous art if: 1) it is from the same field of endeavor as the claimed invention; or 2) it is from a different field of endeavor, but the reference is reasonably pertinent to the particular problem solved by the inventor. *In re Oetiker*, 977 F.2d 1443, 1446-47 (Fed. Cir. 1992); *In re Clay*, 966 F.2d 656, 658-89 (Fed. Cir. 1992). In the *In re Clay* case, the subject claims were directed to a process which improved removal of oil products from storage tanks. The Examiner in that case cited a patent directed to improving production of oil from underground formations. The Federal Circuit held that even though the cited patent and the subject application were related to the oil industry that the cited patent as not analogous art or purposes of such a rejection.

The Dabich reference is not within the field of Applicant's endeavor and not reasonably pertinent to the particular problem with which the inventor was concerned. A person of ordinary skill, seeking to solve a problem related to the structure of folding hand held sterilization cassettes would not reasonably be expected or motivated to look to the field of hatch covers for prefabricated airplane maintenance pits to obtain guidance for such an endeavor. Applicant therefore respectfully requests that the Examiner withdraw the rejection of claim 1 in view of this reference.

2) There is no motivation or suggestion to combine these references, let alone combine them in the matter that the Examiner has indicated.

In order to present a prima facie case of obviousness, it is incumbent upon the Examiner to provide evidence of a suggestion or motivation to combine the references which make up the obviousness rejection.

“The initial burden is on the Examiner to provide some suggestion of the desirability of doing what the inventor has done. ‘To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the Examiner must present a convincing line of reasoning as why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex Parte Clapp*, 227 USPQ 972, 973 (B.D. Bat. App. & Inter. 1985).’” MPEP §706.02(j).

In distinguishing the claimed invention from the prior, the Court may not simply take the individual elements of the patented design, item by item, and try to find whether they exist somewhere in the prior art. *Benchcraft, Inc., v. Broyhill Furniture Ind.*, 681 F.Supp 1190, 7 USPQ 2d 1257.

The **prima facie** case must be supported by evidence.

“The factual inquiry whether to combine references must be thorough and searching.” It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions, and cannot be dispensed with:

- conclusory statements such as those here provided do not fulfill the agency’s obligation
- “Common knowledge and common sense,” even if assumed to derive from the agency’s expertise, do not substitute for authority where the law requires authority.

*In re Lee*, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002).

This objective evidence must provide **motivation** to modify the prior art.

We have noted that evidence of a *suggestion, teaching, or motivation* to combine may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved, although “the suggestion more often comes from the teachings of the pertinent references ...” The range of sources available, however, does not diminish the requirement for actual evidence. That is, the showing must be clear and particular. Broad conclusionary statements regarding the teaching of multiple references, standing alone, are not “evidence.” *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999) (emphasis added).

Even if the prior art may be modified as suggested by the Examiner, the modification is not obvious unless the prior art suggest the **desirability** for the modification. *In re Fritch*, 23 USPQ2d 1780 (Fed. Cir. 1992) (“mere fact that prior art may be modified to reflect features of

claimed invention does not make the modification, and hence, the claimed invention, obvious unless the desirability of such a modification is suggested by prior art, *citing In re Gordon*, 733 F.2d at 902, 221 USPQ at 1127).

Moreover, the motivating suggestion must also be **explicit**. An invention cannot be found obvious unless there is “some explicit teaching or suggestion in art to motivate one of even ordinary skill to combine such elements so as to create the same invention.” *Winner International Royalty Corp. v. Wang*, 48 USPQ.2d 1139, 1140 (D.C.D.C. 1998).

As discussed previously, the Dabich reference is directed to concentric disks that form lids for airport pits. This is not analogous art to the sterilization cassettes which is what the present application and the Wittrock reference deal with, nor is there any suggestion or motivation to combine the Wittrock reference with the teachings from the Dabich reference. There simply is not any evidence of a motivation or suggestion either from the references themselves or from any additional information which has been provided by the Examiner that would support the combining of the Dabich and the Wittrock references in the manner which is claimed in claim 1 of the application as currently amended. Therefore, Applicant respectfully submits that in as no suggestion or motivation has been produced that a *prima facie* case of obviousness has not been established and Applicant respectfully requests the withdrawal of these rejections upon this grounds.

3) Even if combined, the Wittrock and Dabich references fail to teach each and every feature of claim 1.

Claim 1 includes the following limitation “a second hinge oriented in juxtaposed relationship to said first hinge, dividing said top cover into two interconnected pieces wherein the piece of the top cover attached to said end wall or side wall is of the same general dimensional size as said end wall or side wall to which said end wall or side wall to which said cover is attached by means of said first hinge.

Neither the Wittrock or Dabich, or the combination of these references teach this limitation. In as much as this combination which has been cited by the Examiner fails to include all of these features, Applicant respectfully requests that the rejection of these claims as obvious be withdrawn.

The Examiner has also rejected claim 23 under 35 USC §103(a) as being unpatentable over Wittrock et al in view of Kudla. Claim 23 has been canceled from the application.

*New Claims 25-32*

Applicant has added new claims 25-32. These new claims are more narrow than the previously submitted claims and are believed allowable over any of the references which have been cited by the Examiner. These claims contain no new subject matter and acceptance and allowance of these claims is respectfully requested.

The claims attempt to point out the major structural difference which provides the major functional advantage of the present invention over the prior art. The prior art embodiments such as the Wittrock and the Kudla references are made up of a cassette which is cut in half and then hingedly interconnected so as to allow the two halves to open and close. The present invention has sides and ends and a top. The top is connected to a side or an end by a first hinge which is connected to a hinge plate which connects to the top through a second hinge. The hinge plate is dimensioned to be approximately equal in dimension to the distance between the location of the first hinge and the bottom of the end or side to which the hinge is attached. This configuration allows the second hinge to be moved from a first position which is the position wherein the device is generally closed to a second position wherein the second hinge is positioned in the same generally horizontal plane as the bottom surface of the device while also being in the same generally vertical plane as the first hinge. This ability allows the top cover to be firmly folded beneath the device. Neither the Wittrock nor the Kudla references teach this feature.

*Conclusion*

If the Examiner feels it would advance the application to allowance or final rejection, the Examiner is invited to telephone the undersigned at the number given below.

Reconsideration and allowance of the application as amended is respectfully requested.

DATED this 18<sup>th</sup> day of September, 2006

Very respectfully,

  
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I HEREBY CERTIFY that this correspondence is being deposited with the United States Postal Service on the below date as first class mail in an envelope addressed to:

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